

Boston Redevelopment Authority

Document No. 3994
Voted at Meeting of 9/18/80

Robert J. Ryan, Director

September 18, 1980

Mr. Edwin F. Colby
21 Cottage Street
Hingham, MA 02043

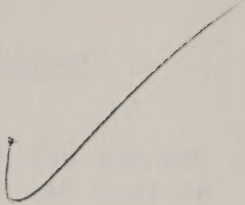
Dear Mr. Colby:

This is formal notice that the Boston Redevelopment Authority, at the meeting on September 18, 1980, voted to give you a hearing, to be held in the board room, ninth floor, City Hall, Boston, Massachusetts at 2:30 P.M., October 2, 1980 relative to the proposed termination of your employment on October 17, 1980 for cause, namely, lack of money. A copy of said vote is attached hereto. Notwithstanding the reason advanced in this notice, there is no waiver thereby of any other grounds the Authority may have as a matter of law for such proposed termination.

Enclosed is a copy of sections forty-three, forty-five and forty-six A of Chapter 31 of the Massachusetts General Laws.

Boston Redevelopment Authority

By _____
Robert J. Ryan
Director



VOTED: That Edwin F. Colby be given a hearing by the Boston Redevelopment Authority in the board room, ninth floor, City Hall, Boston, Massachusetts, at 2:30 P.M., October 2, 1980 relative to the proposed termination of his employment for cause, namely, lack of money. And that Edwin F. Colby be notified of said hearing by letter in the form attached hereto.

PROPOSED RESOLUTION UNDER CONSIDERATION BY THE
BOSTON REDEVELOPMENT AUTHORITY

WHEREAS, on December 30, 1968, (see also resolution of January 25, 1961) the Authority pursuant to the recommendation of the then Development Administrator adopted the following policy:

- "1. Re: Establishment of a class of temporary employees to be known as Development Program employees.

Whereas, the expanded staff requirements for carrying out the Boston Redevelopment Program will exist for a temporary period and can best be met by a maximum flexibility in hiring, dismissal, promotion and transfer of staff, and

Whereas, if such staff were to be classified as permanently employed within the meaning of Section 52 of Chapter 121B of the General Laws, it would seriously jeopardize the Authority's ability to carry out the program with maximum efficiency and economy.

Therefore, be it Resolved that there shall be established a new class of temporary employees of the Authority, which shall be known as Development Program Employees who shall be employed from time to time for work in the Development Program and shall not be considered as permanent employees of the Authority. All such employees, unless otherwise specifically provided, may be dismissed at any time for cause or on three months notice without cause."

WHEREAS, the Director has recommended that the employment of the persons listed on the attached be terminated for cause, namely, lack of money; and

WHEREAS, the Authority has found on evidence presented at the Board meeting of September 18, 1980, that lack of money warrants the termination of employment of the following named individuals and;

On motion duly made and seconded, it was

VOTED: That the employment of the persons~~s~~ listed on the attachment be terminated for cause, namely, lack of money, said termination to take effect October 17, 1980. Said notice shall be in the form attached hereto and shall include a statement that the Authority does not by this action waive any other causes that it may have for the termination of said employment.

of a division of personnel administration in the executive office for administration and finance. See G.L. c. 7, § 4A, and the note thereunder.

Cross References

Treasurers and assistant treasurers of state mental hospitals, appointment, applicability of this section, see c. 12, § 14C.

§ 43. Tenure; discharge, removal, transfer, abolition of office, etc.; notice; hearings; review; reinstatement; punishment duty; reimbursement for defense expenses

(a) Every person holding office or employment under permanent appointment in the official or labor service of the commonwealth, or of any county, city or town thereof, shall have unlimited tenure of office or employment, subject to the provisions of this chapter and the rules made thereunder. He shall not be discharged, removed, suspended for a period exceeding five days, laid off, transferred from such office or employment without his consent in writing if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his consent in writing, nor shall his office or position be abolished, except for just cause and for reasons specifically given him in writing. Before any action affecting employment or compensation referred to in the preceding sentence is taken, the officer or employee shall be given a written statement of the specific reason or reasons for the contemplated action, together with a copy of sections forty-three, forty-five and forty-six A, and shall be given a full hearing before the appointing authority on the specific reason or reasons given, of which hearing he shall have at least three days' written notice from the appointing authority, except in cases of separation from service in the official or labor service, resulting from lack of work or lack of money or from abolition of positions, in which case at least seven days' written notice of hearing shall be given by the appointing authority. Within two days after completion of said hearing, the appointing authority shall give to the employee affected a written notice of his decision, stating fully and specifically the reasons therefor.

(b) If within ten days after receiving written notice of the decision of the appointing authority the person so discharged, removed, suspended, laid off, transferred, lowered in rank or compensation, or whose office or position was abolished, shall so request in writing, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission. Said hearing shall be commenced in not less than three nor more than ten days, and shall be completed within thirty days, after the filing of such request, unless, in either case, both parties thereto shall otherwise agree in writing, or unless a continuance is deemed necessary or advisable in the discretion of the hearing officer, and the findings shall be reported forthwith to the commission for action. The decision of the commission shall be in writing and notice thereof sent to all parties concerned within ten days after the filing of the report. If the commission finds that the action of the appointing authority was justified, such action shall be affirmed; otherwise, it shall be reversed and the person concerned shall be returned to his office or position without loss of compensation. The commission may also modify any penalty imposed by the appointing authority.

(c) Any hearing under this section shall, if either party concerned so requests in writing, be public, and at any such hearing the person concerned shall be allowed to answer the charges preferred against him either personally or by counsel.

(d) The reasons, notices and answers and the order of discharge, removal, suspension, layoff, transfer, lowering in rank or compensation or abolition of the office or position, and the facts as found by the commission, shall be subject to judicial review by the municipal court of the city of Boston or by the district court within the judicial district of which such person resides, as provided in section forty-five.

(c) A suspension for a period not exceeding five days may be made only by the appointing authority or by a subordinate to whom authority to make such suspensions has been delegated, or by a chief of police, or officer performing similar duties, however entitled, or by a subordinate to whom such authority has been delegated by him, and shall be made only for just cause. The officer or employee suspended shall be reinstated by the person authorized to make the suspension at the expiration of the period of such suspension, but shall not be entitled to compensation for such period unless, as hereinafter provided, the suspension is found after hearing or upon appeal to have been without just cause. Within twenty-four hours after his suspension, such officer or employee shall be given a copy of sections forty-three, forty-five and forty-six A, by the person authorized to make the suspension, together with a written notice stating the specific reason for the suspension and informing him that he may, within forty-eight hours of his receipt of such notice, request in writing a hearing by the appointing authority on the question of whether there was just cause for the suspension and if he so requests he shall be given a hearing within five days of the receipt of such request by the appointing authority. A copy of the notice of suspension to the officer or employee shall be forwarded forthwith to the personnel administrator by the person authorized to make the suspension, together with a request for the approval of reinstatement of the officer or employee to be effective at the expiration of the period of suspension. Whenever such hearing is given, the appointing authority shall give the officer or employee suspended a written notice of his decision within two days after the hearing. An officer or employee whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended and he shall be entitled to compensation for the period for which he was suspended, and if it is decided, after hearing, that there was just cause for such suspension such officer or employee may appeal to the commission as provided in paragraph (b) and he shall be entitled to judicial review of the action taken by the commission as provided in paragraph (d). The provisions of paragraph (c) shall apply to all hearings under this paragraph. No officer or employee shall be subsequently discharged, removed, suspended for a period exceeding five days, laid off, transferred from his office or employment without his consent if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight or lowered in rank or compensation, nor shall his office or position be abolished, for the same specific reason or reasons for which he was originally temporarily suspended for a period not exceeding five days under this paragraph except in accordance with paragraph (a). Notice of any action taken by the appointing authority under this paragraph shall be forwarded forthwith to the personnel administrator.

(f) An officer or employee shall automatically be reinstated at the end of the first period for which he was suspended. Any subsequent reinstatement after suspension shall be subject to the approval of the administrator, and, if denied, an appeal may be taken to the commission as provided in paragraph (b) of section two. The notice required by paragraph (a) of this section to be given to an employee whom it is proposed to suspend after a prior suspension shall state that his reinstatement after such suspension is subject to the approval of the administrator.

(g) Punishment duty shall not be imposed without just cause upon any police officer or fire fighter subject to this chapter. A police officer or fire fighter upon whom punishment duty is imposed shall, within twenty-four hours of the imposition of such punishment duty, be given a copy of this section and of section forty-five, together with a written notice stating the specific reason for the imposition of such punishment duty and the duration thereof and informing him that he may, within forty-eight hours of receipt of such notice, request in writing a hearing by the appointing authority, and if he so requests he shall be given a hearing within five days of receipt of such request by the appointing authority. A copy of the notice of imposition of punishment duty shall be forwarded forthwith to the personnel administrator. Whenever such hearing is given, the appointing authority shall

give the police officer or fire fighter upon whom the punishment duty is imposed a written notice of his finding within two days after the hearing. If, after such hearing, the appointing authority finds no just cause exists for the imposition of punishment duty, such punishment duty shall be deemed not to have been imposed; if, after such hearing, the appointing authority finds that just cause does exist for the imposition of punishment duty, the police officer or fire fighter upon whom the punishment duty is imposed may appeal to the commission as provided in paragraph (b), and he or the appointing authority shall be entitled to judicial review of the action taken by the commission as provided in paragraph (d). The provisions of paragraph (c) shall apply to all hearings under this paragraph. Notice of any action taken by the appointing authority under this paragraph shall be forwarded forthwith to the personnel administrator.

(h) Any person holding office or employment under permanent appointment in the official or labor services of the commonwealth, or any county, city, town or district thereof who has incurred expense in defending himself against an unwarranted discharge, removal, suspension, laying off, transfer, lowering in rank or compensation, or abolition of his position, shall, if he engages an attorney for such defense, be reimbursed for such expense: provided, however, that the amount of such reimbursement shall in no event exceed an aggregate sum of nine hundred dollars. Such reimbursement, in each instance, shall be limited to a sum not to exceed two hundred dollars in:—

- (1) a hearing by the appointing authority;
- (2) a hearing by the civil service commission;
- (3) a judicial review by the municipal court of the city of Boston or by the district court within the judicial district where such person resides, as provided in section forty-five.

In addition thereto, reimbursement in each instance shall be limited to a sum not to exceed one hundred dollars for:—

- (1) summons of witnesses;
- (2) cost of stenographic transcript;
- (3) any other necessary expense incurred in such defense.

Any such person shall, upon written application made to his appointing authority within thirty days from final disposition of his case be reimbursed from the same source from which his salary is paid. Such reimbursement shall be paid within thirty days from the receipt of such written application by the appointing authority. No reimbursement shall be made except upon receipt of satisfactory proof that such expenses were actually incurred for the purposes set forth in this section.

- (i) In the computation of any period of time limited by this section, Saturdays, Sundays and holidays shall be excluded.
- (j) The provisions of this section or sections forty-five and forty-six A shall not apply to any person who has been reported as on unauthorized absence as provided for in section eighteen.

Amended by St.1968, c. 837, §§ 3-6; St.1969, c. 786, § 43A; St.1970, c. 72, §§ 1-5; St.1971, c. 179, § 4; St.1974, c. 835, §§ 122 to 125; St.1975, c. 557, § 1.

1968 Amendment. St.1968, c. 537, § 3. approved July 18, 1968. deleted words "transferred from such office or employment without his consent in writing" following words "laid off" in second sentence of par. (a), which were restored by St.1970, c. 72, § 1.

Section 4 deleted "transferred or" following words "laid off" in first sentence of par. (b), which was restored by St.1970, c. 72, § 2.

Section 5 deleted "transfer" following word "layoff" in par. (d), which was restored by St.1970, c. 72, § 2.

pal Court of City of Boston (1975) 337 N.E. 2d 682, 1975 Mass. Adv. Sh. 3261.

Review by single justice on complaint in nature of certiorari seeking review of civil service employee's discharge for unauthorized absence could have been limited to finding that demurrer was properly sustained by municipal court. *Canney v. Municipal Court of City of Boston* (1975) 335 N.E.2d 651, 1975 Mass. Adv. Sh. 2878.

Record disclosed that district court judge in reviewing decision of board of selectmen of town and Civil Service Commission discharging town policeman had not confined himself to determining whether findings of hearing officer were supported by evidence and had therefore applied an improper standard of review, requiring that his decision be set aside and that action of board and Commission be affirmed. *Board of Selectmen of Dartmouth v. Third Dist. Court of Bristol* (1971) 269 N.E.2d 449, 359 Mass. 400.

A "review", within this section providing for proceeding in district court to review action of Civil Service Commission affirming action of appointing authority discharging city civil service employee, indicates a reexamination of proceeding already concluded for purpose of preventing a result which appears not to be based upon exercise of an unbiased judgment. *McCormack v. Municipal Court of Brookline* (1969) 243 N.E.2d 724, 355 Mass. 736.

On review of Civil Service Commission decision which modified town employee's

discharge to six months' suspension, district court judge was not required to take evidence himself but was entitled to review transcript of evidence before Civil Service Commission. *Id.*

Jurisdiction of the personnel appeals board and the civil service commission are mutually exclusive and not concurrent; a matter coming within the jurisdiction of the personnel appeals board is not within the jurisdiction of the civil service commission; in addition, there may be matters not coming within the jurisdiction of either agency. *Op. Atty. Gen. Nov. 23, 1965, p. 180.*

Personnel appeals board does not have jurisdiction to hear and dispose of a further appeal through the grievance procedure in instances where an applicant chooses to appeal to the civil service commission or to the personnel appeals board and such appeal is denied. *Id.*

If a person brings an appeal under the provisions of section 46A of this chapter wherein this section has not been complied with and the civil service commission determines that the rights of the complainant have been prejudiced, the complaint should be immediately restored without loss of compensation or other rights; if it is determined that the rights of the complainant have not been prejudiced, the complaint should be denied. *Op. Atty. Gen. Nov. 22, 1965, p. 172.*

§ 45. Judicial review of removals, etc.

Within thirty days after receipt of notice of the final decision of the commission on a hearing provided for in section forty-three, the person who was discharged, removed, suspended, laid off, transferred from his office or employment without his consent in writing if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight or lowered in rank or compensation, or whose office or position was abolished, may, if said action was affirmed by the commission or if said action was modified by the commission and such person continues to be aggrieved by such modification, file a petition to review the commission's decision in the municipal court of the city of Boston or in the district court within the judicial district of which such person resides. A copy of the petition shall, within the same period, be served personally or by registered mail upon the commission and the appointing authority. Service on the commission shall be sufficient if service is made on any member of the commission or on the secretary to the commission.

The petition shall be addressed to the court and shall name as respondents (a) the chairman and members of the commission and (b) the appointing authority. It shall include a concise statement of the facts upon which jurisdiction and venue are based, facts showing that the petitioner is aggrieved, and the ground or grounds specified in paragraph (6) of this section upon which petitioner contends he is entitled to relief. The petition shall demand the relief to which petitioner believes he is entitled.

Within thirty days after service of a copy of the petition to review upon the commission, the commission shall cause an appearance to be entered on its behalf. At the time of the hearing on the petition, the commission shall file with the court the original or a certified copy of the record of the proceeding under review. The original or certified copy, as the case may be, shall be accompanied by a certification over the signature of the secretary to the commission, that the same is true and complete. The record shall consist of (a) the entire proceedings, or (b) such portions thereof as the commission and the parties may stipulate, or (c) a statement of the case agreed to by the commission and the parties. The expense of preparing the record may be assessed as part of the costs in the case. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

The review shall be conducted by the court and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission, not shown in the record, testimony thereon may be taken in the court.

If application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon such conditions as the court deems proper. The commission may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence together with any modified or new findings or decision.

The court may affirm the decision of the commission if it finds that the decision was justified or remand the matter for further proceedings before the commission; or the court may set aside and reverse the decision of the commission if it determines that such decision is—

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the commission; or
- (c) based upon an error of law; or
- (d) made upon unlawful procedure; or
- (e) unsupported by substantial evidence; or
- (f) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

The court shall make the foregoing determinations upon consideration of the entire record, or such portions of the record as may be cited by the parties.

If the court finds that the decision of the commission confirming action by an appointing authority in discharging, removing, suspending, laying off, transferring from his office or employment without his consent, lowering in rank or compensation, or abolishing his position should be reversed, the employee shall be reinstated in his office or position without loss of compensation.

The decision of the court shall be final and conclusive upon the parties, and a copy of the decision shall be forwarded forthwith by the clerk of the court to the commission, the appointing authority and the petitioner.

Amended by St.1970, c. 72, § 8; St.1970, c. 711.

1970 Amendments. St.1970, c. 711, approved Aug. 19, 1970, rewrote section, as amended by St.1970, c. 72, § 8, approved Feb. 25, 1970 which inserted "from his office or employment without his consent in writing if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight" in first sentence of first paragraph.

1962 Related Laws. St.1962, c. 537, § 7, provided: "Except for just cause and sub-

ject to the provisions of sections forty-three and forty-five of chapter thirty-one of the General Laws as in effect immediately prior to the effective date of this act, no person who on said effective date holds office or employment under permanent appointment in the official or labor service of the commonwealth, or of any county, city or town thereof, shall be transferred in the official or labor service without his consent in writing."

proven innocent" portends a future denial of due process is not ripe for judicial resolution. *Broderick v. di Grazia* (C.A.1974) 504 F.2d 543.

44. Laches

Delay of four months between municipal court decision reinstating police officer

with back pay and filing by police commissioner of petition for writ of certiorari to quash order of municipal court did not constitute laches on part of police commissioner. *Police Com'r of Boston v. Municipal Court of West Roxbury Dist.* (1975) 332 N.E.2d 901, 1975 Mass. Adv. Sh. 2538.

§ 45B. Repealed by St.1973, c. 171

St.1973, c. 171, repealing this section, was approved April 13, 1973.

§ 46A. Petition for writ of mandamus; jurisdiction; procedure for reinstatement

The supreme judicial court shall have jurisdiction of any petition for a writ of mandamus for the reinstatement of any person alleged to have been illegally discharged, removed, suspended, laid off, transferred, lowered in rank or compensation, or whose office or position is alleged to have been illegally abolished under this chapter: provided, that such petition shall be filed in said court within six months next following such allegedly illegal discharge, removal, suspension, laying off, transfer, lowering in rank or compensation, or abolition of his position, unless said court for cause shown extends the time.

If any person alleges that his employment or compensation has been affected by action of the appointing authority in failing to follow the requirements of section forty-three, he may file a complaint with the civil service commission within ten days, exclusive of Saturdays, Sundays and holidays after the said action has been taken. Said complaint shall set forth just how the appointing authority has failed to follow the requirements of section forty-three. This complaint may be filed with the request of the said person for a hearing under the provisions of said section forty-three and if it is determined by the civil service commission that the said authority has failed to follow the requirements of section forty-three and that the rights of said person have been prejudiced thereby, the said commission may order the said appointing authority to restore immediately said person to his employment without loss of compensation or other rights.

Amended by St.1973, c. 557, § 2.

1975 Amendment. St.1975, c. 557, § 2, approved Aug. 23, 1975, substituted "ten" for "seven" days in the first sentence of the second paragraph.

Cross References

Unauthorized absence of employees, applicability of this section, see section 43(j) of this chapter.

Law Review Commentaries

Rights of civil services employees facing discharge: Supreme Court, 1973 term. (1974) 88 Harvard L.Rev. 83.

1. In general

Phrase "without loss of compensation" as used in sections 43 and 45 of this chapter governing discharge and removal of civil service employees and judicial review thereof and this section governing mandamus remedy permits mitigation of damages so that amount of back pay for reinstated officer is determined by subtracting amount that he has in fact earned or could have

earned during period from discharge to reinstatement. *Police Commissioner of Boston v. Ciccolo* (1969) 254 N.E.2d 429, 366 Mass. 555.

City fireman, who brought an action in mandamus for reinstatement, had no constitutional right to be a fire fighter. *Lucacaw v. Fire Commissioner of Boston* (1966) 214 N.E.2d 734, 350 Mass. 325.

Jurisdiction of the personnel appeals board and the civil service commission are mutually exclusive and not concurrent: a matter coming within the jurisdiction of the personnel appeals board is not within the jurisdiction of the civil service commission; in addition, there may be matters not coming within the jurisdiction of either agency. Op. Atty. Gen. Nov. 23, 1965, p. 150.

Personnel appeals board does not have jurisdiction to hear and dispose of a further appeal through the grievance proce-

September 18, 1980

MEMORANDUM

TO: The Boston Redevelopment Authority

FROM: Robert J. Ryan, Director

SUBJECT: Notice of Hearing by the Boston Redevelopment Authority
Board - Staff Personnel Reduction

It is recommended that the proposed vote contained in the attachments be approved in order to effect necessary personnel economies. This proposed termination when adopted is to be effective October 17, 1980.

Attachments:

Sep

NOTICE OF HEARING BY AUTHORITY BOARD

STAFF PERSONNEL REDUCTIONS/1 EMPLOYEE

<u>NAME</u>	<u>POSITION CLASSIFICATION</u>	<u>SALARY</u>
Edwin F. Colby	Deputy Director Transportation Planning	\$31,768